



**TAMKEEN**

**West Bank and Gaza Civil Society and  
Democracy Strengthening Project**

# **Registration of Charitable Associations and Civil Society Organizations: A Study of Legal and Administrative Procedures**

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## Preface

The Civil Society and Democracy Strengthening project (Tamkeen) recognizes the need for a flexible and transparent law regulating relations between civil society organizations (CSOs) and the Palestinian National Authority (PNA), while enabling CSOs to play a greater role in public discourse. To that end, Tamkeen initiated a study of the registration requirements set forth in the 2000 Law of Charitable Associations and CSOs No. 1. The study focuses on:

- Legal options in the registration process
- Registration procedures
- Obstacles and problems confronting CSOs during registration
- Views and opinions of CSOs and charitable associations on the Law and its implementation
- Registration of Jerusalem associations
- Recommended changes in the Law to strengthen the role of CSOs and charitable associations in Palestinian society

Tamkeen hired Attorney Ribhi Qatamish to carry out the study, with a view to identifying the strengths and weaknesses of the Law, problems and constraints in the registration process, and ways to enhance cooperation between community organizations and the PNA.

Upon completion of the draft study, Tamkeen convened two workshops — one in the West Bank and one in Gaza — to discuss the findings. Participants included representatives of the Interior Ministry, the Commission for Community Work Affairs, CSOs, charitable associations, the Palestinian Non-Governmental Organizations (PNGO) Network, lawyers, and Tamkeen's civil society specialists. The workshops focused on the methodology and substance of the draft study, and observations were incorporated into the final document.

We hope this study will be of benefit to Palestinian CSOs and civil society in general, and that the ensuing discussions will help improve and streamline the registration process for CSOs throughout the West Bank and Gaza.

— *Dr. Mohammed Almbaid*  
*Chief of Party, Tamkeen*

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## Acknowledgments

I would like to express my gratitude to Attorney Mohammad Olayyan who helped collect information related to registration procedures for Jerusalem associations, and to Attorney Karem Nashwan, who conducted interviews and supervised the workshop in Gaza. Had it not been for their efforts, this study would not have materialized.

I would also like to thank all the individuals who agreed to be interviewed and all those who participated in the two workshops to discuss an earlier draft of this study. The first workshop was held in Gaza on January 15, and the second in Ramallah on January 20. The comments and observations made by the participants were invaluable in developing this document and improving its content.

Finally, I would like to extend special thanks to Tamkeen team members, particularly Chief of Party Mohammed Almbaid, former Director of Field Operations Ziad Abdallah, Civil Society Specialists Iyad Al-Qadi and Saed Zein, and current Director of Field Operations Mustafa Mari, for their insights. However, as author, I remain responsible for the study, its findings, and any shortcomings therein.

— *Attorney Ribhi Qatamish*

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## ACRONYMS

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CSO	Civil Society Organization
MAS	Palestine Economic Policy Research Institute
NGO	Non-Governmental Organization
PLC	Palestinian Legislative Council
PNA	Palestinian National Authority
PNGO	Palestinian Non-Governmental Organizations Network

## SECTION I

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### Introduction

This study is part of Tamkeen's efforts to strengthen Palestinian CSOs and to promote a constructive, transparent relationship between these organizations and the PNA. It provides a comprehensive analysis of registration procedures under the 2000 Law of Charitable Associations and CSOs No. 1, and examines relevant research, articles, and studies. In preparing the study, we also conducted direct interviews with CSO and Interior Ministry representatives, and drew on lessons learned since the Law came into effect.

Our goal is not to focus on shortcomings or lay blame on one party or the other, but rather to offer an objective analysis of current conditions, identify points of weakness, and provide recommendations for improvement. In this vein, the study aims to develop a sound vision for nurturing a constructive relationship between CSOs and the PNA through improved coordination, cooperation, and professional and legal standards for resolving any disputes or disagreements that may occur.

A solid legal framework is essential for this to happen. Such a framework will provide a foundation for CSOs to formulate a strategic vision with regard to their relationship with the executive authority and their efforts to build awareness of the importance of civic activity. It will also pave the way for strengthening the rule of law and the independence of the judiciary.

Current conditions are characterized by ambiguity between Palestinian CSOs and the Interior Ministry due to the lack of clear mechanisms and inadequate legal and administrative oversight over CSOs and charitable associations. There are cases in which the Ministry has not applied legal provisions as dozens of organizations have yet to obtain official certification more than a year after submitting applications for registration or adjustment. There are also cases in which CSOs have failed to follow legal procedures or to comply with regulatory requirements.

Issued on January 16, 2000, in the city of Gaza, the Law of Charitable Associations and CSOs No. 1 rescinded all previous laws and legal provisions that were until then in effect in the West Bank and Gaza. Article 43 of the Law states that it "repeals the Ottoman Law of Charitable Associations, issued on the 29<sup>th</sup> of Rajab 1327 a.h., and the 1966 Law of Charitable Associations No. 33 regulating associations and social institutions in Palestine, and all else that violates the provisions of this Law."

Law No. 1 came into effect on March 31, 2000, and became the sole legal reference on Palestinian CSOs and charitable associations. This marked a major step forward in eliminating overlap and contradiction in previous legal provisions.

The Interior Minister is responsible for developing regulations to facilitate enforcement of the new Law, per Article 44, which stipulates that: "The Minister has to prepare the forms and issue the by-laws required for implementation of the provisions of this Law." However, the regulations have yet to be approved and have not been discussed with CSOs and relevant ministries. In addition, some parties in the Interior Ministry believe the question of by-laws is

an internal affair, as expressed by the under-secretary of the Interior Ministry in a meeting with the PNGO Network, according to Izzat Abdul-Hadi of the Bisan Center for Research and Development.<sup>1</sup>

Despite the diverse terminology used to define the sector encompassing CSOs, NGOs, charitable associations, and community organizations, the Law and the procedural/administrative policies of the Interior Ministry have provided the framework regulating the relationship between charitable associations/CSOs and the PNA.

This is what we examine in the sections that follow, starting with an overview of the historical background related to the sector, both pre-1994 and under the PNA. We then discuss the current relationship between CSOs and the PNA, particularly the dichotomy between legal provisions and practical experience, followed by an analysis of the key legal and administrative procedures related to registration, adjustment, merger, union, or opening of branches, with a section devoted to the special procedures applied to Jerusalem associations.

The study also discusses the specific requirements related to the statutes and organizational structure of associations and CSOs, including a detailed analysis of the board of directors and general assembly; presents the key problems experienced by associations and CSOs with regard to the registration process from a practical perspective; and examines the draft regulations and Model Statutes prepared by the Interior Ministry.

In conclusion, we provide some preliminary recommendations to guide future research, ensure proper enforcement of the Law, and improve the relationship between Palestinian civil society and the executive authority.

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<sup>1</sup> Interview with Izzat Abdul-Hadi, director general of the Bisan Center for Research and Development, November 24, 2002.



## SECTION II

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### Palestinian Civil Society: Historical Background

#### A. Stages of Development

The Palestinian civil society sector has gone through two main stages of development. Before the establishment of the PNA in 1994, CSOs were part of the political fabric in the struggle against Israeli occupation. A multitude of new CSOs sprang forth in the 1970s and 1980s, mainly relief and service-oriented organizations aimed at countering Israeli policies that exacerbated the marginalization of the Palestinian economy.

In times of escalating conflict, as in the *Intifada* of 1987-1992, illegal Israeli measures, restrictions, and heavy-handed policies had a negative impact on Palestinian CSOs, undermining their organizational structures and effectiveness. During this period, multiple laws prevailed. In the West Bank, the 1966 Jordanian Law of Charitable Associations No. 33 applied. In Gaza, the Ottoman Law of Associations of August 16, 1909, applied, although Israeli Military Order for the Gaza Strip and Northern Sinai No. 686, issued in 1970, introduced amendments to the Ottoman Law. Finally, Israeli law applied in East Jerusalem following Israel's occupation of the city in 1967.

The stage following the establishment of the PNA brought about a comprehensive evaluation of the role and objectives of CSOs and charitable associations, as well as their relationship with the executive authority. In this context, CSOs formulated and proposed a two-tiered framework:

- A *legal framework* enabling CSOs to continue their work, ensuring their legitimacy and independence, and promoting transparency and accountability in civil society activities
- A *professional/operational framework* providing a model for cooperation between CSOs and the public sector<sup>2</sup>

Some organizations failed to adjust to the new developments and disbanded, while others became part of the PNA's organizational structure. A third set of CSOs maintained their independence outside the official structures without being adversary to them.<sup>3</sup>

CSOs and charitable associations increased both quantitatively and qualitatively after the creation of the PNA. By May 2001, the number of registered associations in the West Bank had reached 675, according to a CSO census by the Palestine Economic Policy Research

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<sup>2</sup> Izzat Abdul-Hadi, *Mawdu'at asasiyah fi madmun washakl al-'ilaqa ma bayna al-sulta al-siyasiyah walmujtama' al-ahli* ("Basic Issues in the Relationship Between the Political Authority and Civil Society"), *Assiyasa al-falastiniyah* No. 24, Autumn 1999, pp. 57-62.

<sup>3</sup> Rana Bishara, *Mosahama fi niqash al-o'ulaqa bayna al-monathamat al-ahliyya wa al-solta al-wataneyya* ("A Contribution to the Discussion on the Relationship Between CSOs and the Palestinian National Authority"), paper presented to the PNGO Network on December 15, 1997. Similar developments have taken place in other countries and settings. Organizations that saw the advent of an executive authority as ending their *raison d'être* disbanded and merged with official institutions. Others had their leading figures join the government, justifying such a move as an opportunity to effect change from within. Yet a third group opted for contiguity while maintaining independence from the public sector in terms of vision, strategy, programming, and organization.

Institute (MAS). More than 30 percent of these organizations were registered after the establishment of the PNA. In Gaza, out of the 575 associations recognized by the Interior Ministry, 496 were registered after the inception of the PNA.<sup>4</sup>

In addition, associations assumed new roles after 1994, providing oversight of governmental and quasi-governmental institutions, promoting democracy, pluralism, and professional standards, and influencing legislative policy, planning, and decision making. Although the flurry of CSO activities complemented the work of the executive authority, it sometimes conflicted with PNA policies, underscoring the need for a framework to guide the process of democratic transformation.

Several factors compounded the problem, including the multitude of PNA agencies tasked with licensing CSOs and the resulting overlap in their duties and responsibilities. The main factor, however, was the prevailing tendency of the CSO community to operate outside the confines of the law. The chronic state of conflict under Israeli occupation had created a general lack of confidence and trust in all laws “because Palestinian citizens were not governed at any point in time by national laws enforced by an elected national executive authority.”<sup>5</sup>

Consequently, there were opposing views as to what the spirit of the law should be. In official circles, some believed in the need for an authoritarian law to keep the CSO community in check. Others called for a law recognizing the uniqueness of the Palestinian experience and embodying international standards and democratic principles, a view shared by the CSO community. Ultimately, the Law of Charitable Associations and CSOs No. 1 was passed. Below, we discuss the conditions of legitimacy required to establish charitable associations or CSOs as a precursor to examining the registration procedures stipulated in the Law, as well as additional requirements set forth by the Interior Ministry.

## **B. Conditions of Legitimacy for Charitable Associations and CSOs**

Article 26/2 of the 2002 Basic Law grants Palestinians the right to “establish trade unions, associations, mass unions, leagues, clubs, and popular institutions”<sup>6</sup> and prohibits any executive measures that may infringe on these activities or usurp this right without legal justification. This is reinforced by Article 1 of the 2000 Law of Charitable Associations and CSOs, which stipulates that “All Palestinians have the right to practice social, cultural, professional, and scientific activities freely, including the right to establish and operate associations and CSOs.”

Moreover, the legislature put in place specific guarantees to provide additional safeguards for the principle of legitimacy. Article 2 of the Law of Charitable Associations and CSOs defines a CSO or association as “an independent legal entity established by agreement among no less than seven persons for the purpose of achieving legitimate objectives that are in the public interest, without seeking financial profit or personal gain.” This means the following prerequisites must be met:

<sup>4</sup> *Tashkeel al-jam'ayat fi manateq al-solta al-wataneyya bayna al-qanun wal-mumarasa* (“The Establishment of Associations in the Territories of the Palestinian National Authority: Law Versus Practice”), Palestinian Independent Commission for Citizens’ Rights, *Silsilat al-taqarir al-khasa* No. 15, May 2002, pp. 4-5.

<sup>5</sup> Khalil Al-Zaben, *Al-‘ulaqa bayna munathammat al-mujtama’ al-madani walsulta al-filistiniyah* (“The Relationship Between Civil Society Organizations and the Palestinian Authority”), *Assiyasa al-falastiniyah* No. 24, Autumn 1999, p. 11.

<sup>6</sup> Basic Law, Article 26.

- *Sufficient number of natural and legal persons.* The Law stipulates that seven citizens (“natural persons”) or more may establish a charitable association or CSO. In the case of legal entities, two charitable associations or CSOs may “merge” or enter into a “union” to establish a single association or CSO with a new legal personality, in accordance with Articles 2 and 27.<sup>7</sup> In the case of a union, a single representative body is created, while each association or CSO that enters the union maintains its independent legal personality. In the case of a merger, a single representative body is created, with a new legal personality having no relation to conditions existing prior to the merger.
- *Clear goals and objectives serving the public interest.* An association or CSO must have clearly stated goals and objectives that advance the public interest. The term “public interest” is somewhat vague, and its meaning is dependent upon time, place, and the nature of the existing political system. In general, however, the public interest refers to the basic needs and requirements of community members or society at large, or to issues that are of concern to the majority of individuals in a targeted community.
- *Absence of financial profit or personal gain.* The founders of an association or CSO cannot stand to profit or achieve personal gain from the organization, or pursue any activities that contradict the organization’s stated objectives.

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<sup>7</sup> There is a contradiction between Article 2 and Article 27. Article 2 requires the presence of two or more associations or CSOs, whereas Article 27 requires the presence of three or more associations or CSOs.



## SECTION III

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### The Relationship Between CSOs and the Palestinian National Authority: Law Versus Practice

In most cases, the PNA and CSOs coordinate their efforts to meet the diverse needs of Palestinian citizens. However, differences have surfaced during certain periods and over specific issues such as human rights violations and corruption. For the most part, CSOs have dealt with these differences with extreme caution by trying to resolve them through dialogue and in the context of legal frameworks.

In light of the above, we believe it is wrong to assume that the main source of tensions between the PNA and the CSO community is over the need to hold CSOs accountable and to provide financial oversight of their operations. The most salient factor in the PNA-CSO equation relates to larger issues regarding the nature of the relationship between the PNA and society at large, between the individual and the state, between the ruler and the people, and whether this relationship is governed by the law or falls outside it.<sup>8</sup>

Some observers believe the PNA's reservations with regard to the Law stem from the executive authority's inability to impose a law compatible with its own vision of what the nature and role of CSOs should be. This viewpoint was expressed by Hatem Abdul-Qadir, a member of the Palestinian Legislative Council (PLC): "The PNA is not at ease with this Law and with the substantive amendments that were introduced to it, to the extent that some [PNA] officials went as far as to accuse the PLC of complicity with CSOs."<sup>9</sup>

At a minimum, the basic role of the Law is to regulate the relationship between the PNA and CSOs. On the one hand, the Law provides CSOs with legal protection and operational freedom. On the other, it gives the executive authority the right to monitor CSO operations and financial sources, and to hold them up to accountability and transparency standards. Hence, the Interior Ministry has the authority to conduct oversight functions over the internal and external operations of all associations and CSOs, in accordance with Articles 11 and 12, and over the financial operations of CSOs, in accordance with Articles 13, 30, and 31.

However, the Interior Ministry, and specifically the Department of Public Affairs, which is in charge of oversight and follow-up, has failed to fulfill its role in a consistent and professional manner. The reason, according to Izz Abu Sneh, director of the Ministry's Legal Department in the West Bank, is "the lack of a sufficient number of qualified cadres and of a plan for appropriate oversight activities."<sup>10</sup> Some observers believe the Interior Ministry compensates for its failure to carry out its functions in accordance with the Law by complicating registration procedures, often taking a stricter posture than necessary. Moreover, the Ministry uses its authority to apply further pressures on CSOs in coordination with other government agencies, particularly with respect to financial matters.

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<sup>8</sup> George Giacaman, *Halat al-mujtama' al-madani fi falastin* ("The Status of Civil Society in Palestine"), *Assiyasa al-falastinyah* No. 24, Autumn 1999, p. 92.

<sup>9</sup> Hatim Abdul-Qadir, *Al-monatham al-ahliyya wa al-azma al-mofta'ala* ("The CSOs and the Contrived Crisis"), *Assiyasa al-falastinyah* No. 24, Autumn 1999, p. 100.

<sup>10</sup> Interview with Izz Abu-Sneh, director of the Legal Department of the Interior Ministry in the West Bank, December 2, 2002.

Article 31 of the Law stipulates that “Any association or CSO has to deposit its funds under its name in an accredited bank or banks and inform the competent ministry of the depository bank. It is not permissible for an association or CSO to keep in its possession cash funds of an amount exceeding the expenditure for one month.” This means that the Law has granted some powers of financial oversight to the competent ministry according to specific conditions and in specific cases. Moreover, Article 7/2 of the 1995 Law of the General Monitoring Commission No. 17 states that “All public bodies and institutions, trade unions, associations, and mass unions of all kinds and at all levels are subject to the supervision of the General Monitoring Commission.”<sup>11</sup>

In coordination with the Interior Ministry, the Palestine Monetary Authority issued Circular No. 134/2001 on September 5, 2001, prohibiting any bank operating in the Palestinian territories from opening accounts for CSOs or charitable associations without the approval of the Interior Ministry. The Circular also requires all banks to meet the following conditions before opening such accounts:

- Obtain a copy of the statutes of the charitable association or CSO, certified by the Interior Ministry
- Obtain the approval of the Interior Ministry to open an account
- Ascertain that authorized signatures for the account are those authorized by a memorandum from the Interior Ministry<sup>12</sup>

This means that three government authorities have direct oversight powers over CSO finances: the Interior Ministry, the competent ministry, and the General Monitoring Commission. In addition, a CSO’s board of directors, general assembly, and staff have internal control and supervisory roles and powers.

Critics contend that the Interior Ministry complicates registration procedures to make up for lack of respect for the provisions of the Law, particularly with regard to “granting a registration certificate to associations or civil organizations that have applied for registration or adjustment within 60 days from the date of submission of the application to the Legal Department.” Article 4/3 of the Law stipulates that “If the two-month period following the submission of the application elapses without a decision, the association or civil organization is regarded as having been registered by law.”

In practice, dozens of associations and CSOs have been operating for years and are unable to discontinue their programs while awaiting registration, especially when the process is delayed due to ambiguous procedures often in contravention of the Law. For example, there are associations and CSOs that have registered as “non-profit companies” with the Registrar of Companies, as is the case of Al-Haq. There are also associations and CSOs operating in Jerusalem that have registered with the Israeli Interior Ministry. The Palestinian Interior Ministry has refused to deal with these organizations for political reasons, as was expressed by several Ministry officials, asking them to register anew rather than apply for adjustment. This would require Jerusalem-based organizations to dissolve themselves first. The time period between dissolution and approval of a registration request would essentially create a “legal vacuum” for these organizations. This measure does not take into account the conditions under which certain CSOs were established, nor their specific characteristics,

<sup>11</sup> 1995 Law of the General Monitoring Commission No. 17, Article 7/2.

<sup>12</sup> Circular No. 134/2001, issued by the Palestine Monetary Authority on September 5, 2001.

driving many organizations to operate outside the boundaries of the Law, or to move from one jurisdiction to another.

According to George Giacaman, director general of the Palestinian Institute for the Study of Democracy, “The main problem is not in the provisions of the Law, but the absence of the rule of law. The Interior Ministry does not respect the Law, as demonstrated by the draft regulations, which can be regarded as a new law, and the Model Statutes, which violate the Law in some of their provisions. The problem lies in the hostility toward CSOs.”<sup>13</sup>

On the other hand, many CSOs and charitable associations have violated the provisions of the Law as well. Some CSOs have failed to conduct internal elections, or keep adequate records of their operations, or establish a board of directors and a general assembly. About 25 percent of associations and CSOs in Gaza have made no attempt to adjust their status to comply with the Law, according to Yunis Abul-Nada, director of the Interior Ministry’s Department of Associations. This means these organizations are operating totally or partially outside the Law. According to a 2001 survey by the Palestine Economic Policy Research Institute (MAS), almost 24 percent of CSOs have appointed their board of directors, and close to 6 percent have selected their boards through a combination of appointments and elections. The survey also found that more than 9 percent of the associations had held no board of directors or general assembly meetings at all, while 28 percent had held only one meeting over the entire year.<sup>14</sup>

Non-compliance with the Law has created an ambiguous relationship tainted by mutual suspicions and a certain level of mistrust between CSOs and the executive authority. Most observers believe the Law itself provides the foundation for resolving this problem “because it is the regulator of the relationship so that it may go forward in a sound and integrated manner, for only by law can the executive authority limit the activities of these organizations, and the CSOs cannot but abide by the Law.”<sup>15</sup>

In the same vein, MAS Director Ghania Malhis adds: “Mismanagement and corruption result from the absence of legislation, laws, regulations, and by-laws, or because of their ambiguity or lack of clarity, or due to ignorance of the law, or the absence or weakness of enforcement, or lack of accountability in the event of their violation.”<sup>16</sup>

<sup>13</sup> Interview with George Giacaman, director general of *Muwatin*-The Palestinian Institute for the Study of Democracy, November 6, 2002.

<sup>14</sup> Yassir Shalabi et al, *Ti'dad al-monathamat gair al-hukomeyya al-falastenyya fil-daffa al-garbeyya wa qita' gaza* (“Survey of Non-Governmental Organizations in the West Bank and the Gaza Strip”), MAS Publications, 2001, pp. 28-29.

<sup>15</sup> Ghazi Hamad, *Al 'olaqa bayna al-sulta al-falastenyya wal-monathamat al-ahleyya* (“The Relationship Between the Palestinian Authority and CSOs”), *Assiyasa al-falastinyah* No. 24, Autumn 1999, p. 108.

<sup>16</sup> “A Dialogue with Dr. Ghania Malhis,” *Assiyasa al-falastinyah* No. 24, Autumn 1999, p. 119.





## SECTION IV

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### Legal Procedures for Registering West Bank/Gaza Organizations

Article 2 of the Law defines a charitable association or CSO as “an independent legal entity established by agreement among no less than seven persons for the purpose of achieving legitimate objectives that are in the public interest, without seeking financial profit or personal gain.” This means that the Law has granted the right to any group of seven or more persons to establish a charitable association or CSO so long as the founders do not stand to reap profits or personal advantages.

On the other hand, the Law has also put in place certain conditions to be met for registering a charitable association or CSO with the Interior Ministry. In doing so, the Palestinian legislature has adopted a line similar to that of most Arab legislators, recognizing the establishment of charitable associations or CSOs as a right conditional on the approval of the competent administrative authority (i.e., the Interior Ministry). In many countries, simply submitting applications to the Interior Ministry is sufficient. However, the Palestinian legislature also requires organizations to adhere to certain legal procedures and to obtain a registration certificate, going even further by granting the competent administrative authority wide powers of oversight, including the right to dissolve associations if they violate their stated objectives or in cases of proven, substantive violations of their statutes. Per Article 37, the Law does not specify which violations would warrant such measures, leaving the issue to the discretion of the competent authorities.

In this section, we examine the legal procedures required for registration, adjustment of status, merger, unification, or opening of branches for charitable associations and CSOs in the West Bank and Gaza.

#### A. Registration Procedures

Chapter 2 of the Law of Charitable Associations and CSOs outlines registration procedures and the requirements that must be met by founders or legal entities. Below, we highlight key steps in the registration process, including requirements not stipulated by law but imposed by Interior Ministry officials. In identifying these steps, we drew upon the practical experiences of associations and CSOs over the past two years.

*Submit a written application for registration.* This basic requirement is stipulated in the first paragraph of Article 4: “The founders of the association or civil organization shall submit a written application satisfying the required conditions to the competent department at the Interior Ministry.” The application must include the following:

- A list of each member of the founding body, including full name, identity card or passport number, address, telephone number, profession, age, and nationality
- A list of each member of the provisional board of directors, which must have no less than 7 and no more than 13 members, including full name, identity card number, address, telephone number, profession, age, and nationality

- The names of at least three members of the board of directors authorized to sign on behalf of the association or CSO
- The names of one or more members of the founding board or a lawyer appointed to complete the registration procedures
- A 20 J.D. revenue stamp affixed to the application

In addition to the above, registration procedures in Gaza also require the following:

- The curriculum vitae of each founding member must be attached to the application, detailing former and current political affiliations, countries to which the member has traveled, date and reason for any detentions, the names of three close friends, and a summary of main events in the life of each member. These are intelligence-gathering types of questions and have no relevance to the founding of an association or CSO. In fact, this requirement violates the Law of Charitable Associations and CSOs and the basic rights provided in the Palestinian Basic Law.
- The founding members are required to submit the application in person, not through the offices of an attorney. In many cases, public servants have refused to accept applications delivered by attorneys on behalf of founding members. This constitutes unwarranted interference in the application process as the Law does not provide any basis for such a formality.

*Include copies of identity cards or passports for board members.* The application must include photocopies of the identity cards or passports of each member of the board of directors.

*Attach three typed copies of the association's statutes.* In addition to submitting a copy of their statutes, associations must include an annex listing all members of the founding board, as well as the signatures of members who attended the founding meeting in which the statutes were approved.

*Submit the application to the Legal Department.* The association must submit the completed application to the Interior Ministry's Legal Department. Once the application has been reviewed and found to have met all legal conditions, it is accepted and referred to an officer in the Department of Public Affairs, who issues a receipt.

*Department of Public Affairs prepares security memorandum.* The Interior Ministry's Department of Public Affairs prepares a memorandum requesting the opinion of the security services (i.e., Preventive Security and General Intelligence Services) with regard to the founding members of the association or CSO. This is an internal Ministry procedure that is not based on any provision of the Law.

*Department of Public Affairs prepares memorandum to competent ministry.* The Department of Public Affairs also sends a memorandum to the competent ministry asking for its opinion with regard to the application for registration. This procedure is not based on legal grounds. Amjad Abu Shamleh, director of the Department of Public Affairs in Ramallah, said in an interview that "the response from the competent ministry should come within one month, and

that of the security agencies within two weeks. Not receiving a response does not restrict the Interior Ministry and does not defer the granting of a certificate of registration.”<sup>17</sup>

This appears to be an expectation or assumption on the part of the director general as there are no provisions in the Law requiring the competent ministry or the security services to respond within a specific period of time. The extensive research and interviews conducted as part of this study have shown that most associations and CSOs do not obtain their registration certificate within two months. The reason given for this delay is often that the competent ministry and/or security services have not yet replied to the Interior Ministry’s memoranda.

Yunis Abu Nada, director of the Interior Ministry’s Department of Associations in Gaza denied this, saying: “The application is examined and the file is completed, and within two months a decision is made to register [the association]. Completing the forms includes obtaining the approval of the competent ministry.”<sup>18</sup> When questioned about the reasons for a security check, he said: “This is a natural arrangement and an internal procedure applied in all Arab and Western countries to check the integrity of the founding members,” adding that “no association was refused registration due to security reasons.”<sup>19</sup>

However, Attorney Subhiya Jom’a disagrees: “The most serious obstacle in the registration of associations is the referral of the request to the security services. If the security services must have a role, this should not be felt by the citizen. However, the founders are aware of the fact that their request goes through a security check, and the security services are capable of halting the operations of some of the associations that are already registered.”<sup>20</sup>

Many applicants follow up on the status of their application directly with the security services and the competent ministry to speed up the process.

*Application referred to West Bank committee for approval.* The application is submitted to the Registration Subcommittee for Public Affairs in the West Bank for approval.<sup>21</sup>

*Application referred to Gaza committee for approval.* The application is then sent to Gaza for approval by the Central Committee for Public Affairs in the West Bank and Gaza<sup>22</sup>, after which it goes to the under-secretary of the Ministry for issuance of the registration certificate.

This means that the approval of four government agencies is required to obtain a certificate of registration: the Interior Ministry, the competent ministry, the Preventive Security and General Intelligence Services, and the former Ministry for Community Work, in accordance with the draft regulations prepared by the Interior Ministry.

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<sup>17</sup> Interview with Amjad Abu Shamleh, director of the Interior Ministry’s Department of Public Affairs, Ramallah, November 25, 2002.

<sup>18</sup> Interview with Yunis Abu Nada, director of the Interior Ministry’s Department of Associations, Gaza. The interview was conducted by Attorney Karem Nashwan in Gaza on November 18, 2000.

<sup>19</sup> Ibid.

<sup>20</sup> Interview with Attorney Subhiya Jom’a, a human rights activist who works for the Palestinian Independent Commission for Citizens’ Rights in Gaza, November 18, 2002.

<sup>21</sup> The Subcommittee is made up of the director general of the Department of Associations, the director general for public affairs, the legal adviser, and the director general of the Ministry.

<sup>22</sup> The Central Committee is made up of the legal adviser, the director general for public affairs, the director for associations, and their counterparts in Gaza.

## B. Adjustment of Status Procedures

Article 42 of the Law of Charitable Associations and CSOs discusses adjustment of status for organizations that were in operation before the new Law came into effect. This measure recognizes the uniqueness of the Palestinian situation, whereby status varied according to geographic location, namely whether an organization operated in the West Bank, Gaza, or Jerusalem. Therefore, the new Law had to deal with the fact that various organizations were registered by different authorities or according to different rules.

To avoid a state of chaos, Article 42 stipulates that “All associations and civil organizations that were in existence prior to the present Law coming into effect are considered officially registered, provided they adjust their status in accordance with the provisions of the present Law within a period not exceeding nine months after the Law comes into effect. Otherwise, they will be considered to be in violation of the provisions of the Law.”

The problem does not lie in the ambiguity of the text, but in understanding its intent with regard to adjustment of status. The text does not specify the procedures to be followed, leaving it to the competent authorities to determine the appropriate mechanisms for adjustment of status. This ambiguity has been interpreted to imply absolute authority for Interior Ministry officials to put in place conditions and procedures similar to those required for new registration.

Below, we outline the procedures required for adjustment of status based on the provisions of the Law, additional conditions required by public officials, and the practical experiences of charitable associations and CSOs.

*Application for adjustment of status.* The charitable association or CSO must submit an application for adjustment of status that includes the following:<sup>23</sup>

- A list of each member of the board of directors, including full name, identity card or passport number, address, telephone number, profession, age, and nationality
- Number of times elections were held for the board of directors since the organization was established
- A list of all general assembly members, including full names and the date they joined the assembly
- Names of members with authority to sign on behalf of the association/CSO
- Photocopies of the identity cards of board members
- A list of all bank accounts
- Three copies of audited financial reports for the past two years
- Three copies of the statutes of the association/CSO
- Original or photocopy of a registration certificate issued by a Palestinian ministry

*Internal Interior Ministry procedures.* Once the application is submitted to the Interior Ministry’s Legal Department and meets all the above requirements, a number of internal administrative procedures are followed. These are not stipulated by law, but have been adopted by the Interior Ministry. They are as follows:

- The application is referred to the Department of Public Affairs.

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<sup>23</sup> An application for adjustment is exempted from revenue stamps.

- A security clearance is sought from the Preventive Security and General Intelligence Services.
- Approval of the competent ministry is obtained.
- The application is first sent to the West Bank Subcommittee, then to the Central Committee for the West Bank and Gaza.
- The application is referred to the under-secretary of the Interior Ministry for approval.
- The certificate of registration is issued.

Unfortunately, the Law does not specify a time limit for processing an adjustment of status. Attorney Ibrahim Barghouti comments: “To impose the same procedures required for new registration in the case of adjustment violates the Law and could prejudice the legal status of the association or CSO and its legal relationship with others.”<sup>24</sup> From a legal standpoint, there is no justification for applying these procedures to existing, legitimate associations and CSOs that enjoy independent legal status, particularly the Jerusalem associations due to their unique situation. It would be more appropriate for the Interior Ministry to require no more than the submission of formal documentation for adjustment of status.

*Three centers for registration.* The Interior Ministry has three administrative centers that handle registration:

- For the central and southern parts of the West Bank, the center is based in the city of Ramallah.
- For the northern parts of the West Bank, the center is in the city of Nablus.
- For all Gaza governorates, the center is in the city of Gaza.

In the event an application for registration or adjustment occurs in a city where there is no administrative center for registration, for example in Jenin, the application must be submitted to the competent Interior Ministry department in Jenin, then referred to the Department of Public Affairs. The latter examines the application and refers it to one of the three authorized central centers for final processing. In this case, the application would go to Nablus, the administrative center for the northern West Bank.

Once a registration certificate is issued, it is sent to the branch office where it was originally received for delivery to the applicant. The registration certificate must be delivered by the Interior Ministry office where the application was originally submitted, and not by the central office. Any bypassing of the administrative hierarchy is considered to be an administrative offense.

In the event a registration certificate is denied, the denial must be approved by the Minister or competent party. Applicants have the right to contest before the competent court within a month of the date of notification.

### **C. Merger Procedures**

Merger means the union of two or more associations pursuing common objectives into a single organization with a new legal personality — i.e., one general assembly and one board

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<sup>24</sup> Interview with Attorney Ibrahim Barghouti, chairman of the Board of Directors of the Palestinian Center for the Independence of the Judiciary and the Legal Profession, November 26, 2002.

of directors. For this to happen, two-thirds of the general assembly members of each organization must approve the merger, or more if the statutes of the merging entities so require.

The merger procedures outlined below are not stipulated by law but based on actual practice and informed by research, discussions, and interviews with Interior Ministry officials. Draft regulations by the Interior Ministry are expected to further elaborate on these requirements. Currently, an application must be submitted on behalf of two or more associations or CSOs, and must include the following:

- Three copies of the statutes of each association applying for merger
- The registration certificate of each merging entity
- A copy of the decision to merge approved by two-thirds of the general assembly membership of each association or CSO
- A list of all members of the boards of directors for each entity, including full name, address, telephone number, profession, identification card number, age, and nationality
- Full names of the general assembly members of each merging entity
- Proof that the commitments of each organization have been cleared prior to the merger
- Proof that all property of the merging entities has been handed over to the new association/CSO
- Payment of a 20 JD fee

#### **D. Unification Procedures**

A union is a coalition of three or more associations or CSOs, provided they have obtained a registration or adjustment certificate from the Interior Ministry. The result of the coalition is a representative body, but each association or CSO maintains its independent legal personality. The coalition does not prejudice the rights of others vis-à-vis each association or CSO prior to the union.

Unification procedures are not stipulated by law but derived from actual practice, research, and interviews with Interior Ministry officials. An application for registration of a union must include the following:

- Copy of the decision by two-thirds of the general assembly membership of each association or CSO wishing to enter into a union
- A registration or adjustment certificate issued by the Interior Ministry for each association or CSO
- A list of all members of the board of directors of the union, including full name, address, etc.
- A list of all members of the general assembly
- The statutes of the new union, including the structure of the board of directors, its membership, management, organization, and competence

In an effort to obtain more information on the criteria and procedures for registration of a union, we interviewed the director of the Department of Public Affairs, Amjad Abu Shamleh,

who stated: “We have not yet arrived at an agreement. We are still exchanging views, and so far no applications of this type have been submitted.”<sup>25</sup>

## **E. Procedures for Opening Branches**

Article 15/2 of the Law grants Palestinian charitable associations and CSOs “the right to open branches in Palestine.” This right is stipulated in the statutes of the associations and CSOs we examined, as well as in Article 5 of the Model Statutes prepared by the Interior Ministry, which states that “An association is entitled to open one or more branches in Palestine, with the approval of the competent ministry.”

From a legal perspective, this right is not open to interpretation or extrapolation, and cannot be usurped or restricted. The problem lies in the additional conditions set by the Interior Ministry. For example, according to Mazen Shaqqourah, for an association or CSO to open a new branch in Gaza, “a condition is imposed whereby the branch is required to register with new procedures and documentation, and to select a new board of directors separate from the board of directors of the main center. This is what the Interior Ministry requires.”<sup>26</sup>

From the perspective of civil society activists, opening a new branch should not require all these procedures. A branch is part of the larger entity and is subject to its decisions and policies. Because it is not an independent legal entity, it should not require independent licensing. Associations and CSOs feel that proper notification through an adjustment on the registration certificate indicating the name of the branch should be sufficient. However, the Interior Ministry in Gaza does not share this view. Ministry officials insist on “registering the branch and on requiring the same procedures, such as a general assembly, a board of directors, and financial reports. What is strange is that the registration of a branch requires the same procedures as those for registering a new association.”<sup>27</sup>

Circular No. 71, issued by the Interior Ministry in 2001, states that “The opening of a branch or branches for any registered association may not be approved by the Directorates of the Interior Ministry unless the Directorates of Public Affairs are first approached and in turn submit the issue to us for approval.”<sup>28</sup>

According to Yunis Abu Nada, director of the Interior Ministry’s Department of Associations in Gaza, the requirements for opening a new branch are:

- Submission of reports to establish that the mother association has sufficient financial capacities to open the branch
- Approval of the board of directors, decided in a formal meeting
- Clarification of the nature of the branch (is it a branch with its own board of directors, or an office with staff?)
- Approval of the competent ministry
- Submission of financial and administrative reports by the mother association<sup>29</sup>

<sup>25</sup> Interview with Amjad Abu Shamleh, op cit.

<sup>26</sup> Interview with Mazen Shaqqourah, director of the Gaza office of the Palestinian Independent Commission for Citizens’ Rights, November 16, 2002.

<sup>27</sup> Interview with Mohamad Dahman, director of the Gaza branch of the Democracy and Workers’ Rights Center, November 15, 2002.

<sup>28</sup> Circular No. 71, issued by the Interior Ministry, August 9, 2001.

<sup>29</sup> Interview with Yunis Abu Nada, op cit.

On the same issue, Mr. Abu Shamleh said: “All we require for opening a new branch is that the charitable association or civil society organization be officially registered, and we will grant our approval within days. This is what happened with the Association of Palestinian Journalists. They submitted a request to open a new branch on November 24, 2002, and the approval was issued on November 27, 2002.”<sup>30</sup>

As these statements illustrate, there is a great deal of contradiction with regard to the procedures required for opening association or CSO branches. Because of this confusion, public officials tend to assume a wide margin of authority despite legal provisions granting associations the right to open branches without any complications, as stipulated in Article 15/2 of the Law.

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<sup>30</sup> Interview with Amjad Abu Shamleh, op cit.



## SECTION V

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### Legal Procedures for Registering Jerusalem Organizations

#### A. Registration Procedures

The 1980 Israeli Law of Associations applies to the registration of charitable associations or CSOs in the city of Jerusalem. The registration procedures for Jerusalem organizations are as follows:

- The founders (two or more) hire an attorney to act on their behalf during the registration process and to represent them before the Registrar of Associations of the Israeli Interior Ministry.
- The attorney completes the registration application, including the following information:
  - Proposed names for the association, in order of preference
  - Address of the association
  - Whether the association is registered in accordance with the Ottoman Law (if so, the date of registration, reference number, district, type of association, and name of the applicants must be included)
- The application must include an outline of the Model Statutes prepared by the Interior Ministry as an attachment. Signing of the registration application constitutes consent to use the Model Statutes. However, Article 10 of the 1980 Law of Associations allows the association to present its own statutes, provided its provisions do not conflict with the Model Statutes or with the Law.
- The application must also include the following information:
  - A list of all founding members, including full names, identity card numbers, dates of birth, residence numbers, towns, telephone numbers, and signatures
  - A declaration by the founding members indicating their readiness to work for the association as members of its board of directors
  - Signatures by all founding members at the end of the application form
  - A statement by the attorney certifying the validity of the signatures
  - A registration fee of 620 NIS
- The attorney submits the completed application to the Registrar of Associations, along with an outline of the Model Statutes or the statutes established by members of the founding committee, and a receipt for payment of the registration fee.
- The Registrar of Associations gives the attorney a receipt as proof that the application has been received, including the date of submission and the proposed name of the association.

- During this stage, the association is in the process of being established and is not allowed to conduct any activities.

## **B. Delays in Registering Jerusalem Organizations**

The Law does not stipulate a specific time limit for the Registrar of Associations to complete the registration process. Our research indicates that some associations are registered within one month, others within two months, with the majority having to wait a full year. Article 5/a (amendment) of the Law allows an association that intends to collect contributions to save the life of a human being to address the Interior Minister after two weeks from filing the application if the Registrar of Associations refuses to register it without substantiating its denial. Registration in this manner is considered provisional and is rendered ineffective after one year.

It should be pointed out that most associations in Jerusalem typically wait one year or more to obtain a license. The Registrar of Associations usually cites the heavy workload, the high number of applications, and other similar administrative excuses. Specifically, the reasons for delays in registering Palestinian organizations in Jerusalem are:

- Unsubstantiated delay. In this case, the attorney may address a written notification asking the Registrar of Associations to expedite the registration process. Under certain circumstances, the attorney may, after three months, approach the Supreme Court to obtain a decision obligating the Registrar of Associations to complete the registration or substantiate the delay.
- A delay due to an objection raised by the Registrar of Associations as to the choice of name for the association. Article 3 of the Law allows the Registrar of Associations to object to the name proposed for an association and request that the founding committee propose a different name.
- A delay due to an objection as to one of the objectives of the association. This would apply to a stated objective that is too broad and unspecific, or to an objective that conflicts with the Law.
- A delay due to queries as to sources of funding
- A delay due to Registrar of Associations contesting the legal capacity of one of the founding members

In the above cases, the founding committee is obligated by Law to abide by the demands of the Registrar of Associations and to implement any required modifications.

## **C. Refusal to Register**

The Law allows the Registrar of Associations to refuse to register a Jerusalem association in the following cases:

- If one of its objectives denies the existence of the state of Israel
- If one of its objectives denies the democratic nature of the state of Israel

- If they are reasonable grounds for concluding that the association may be used as a cover for illegal activities, per Article 3 of the 1980 Law of Associations

When applications for registration are turned down, the Registrar of Associations typically cites the third reason in substantiating its denial. The following conditions often raise suspicions leading to a denial:

- Ambiguous source of funding, or bank accounts in suspect banks
- Members of the founding committee have a “security record” with the Israeli intelligence services
- Certain beneficiary groups served by the association have links to political activities or the *Intifada* (e.g., support for the families of martyrs, prisoners, the wounded, etc.)
- One of the objectives of the association is linked to a current dispute (such as purchase of real estate from Jews, purchase of real estate threatened with confiscation, etc.)

Moreover, all members of the founding committee are subject to a security check by the Israeli security services. The outcome of the security check plays an important role in the decision of the Registrar of Associations, which always cites Article 3 of the Law in denying a registration if Israeli security agencies so recommend.

In the event a registration is rejected, the Registrar of Associations must address a letter to the founding members to inform them of the denial. The founding members may file an appeal with the Supreme Court within 30 days of the date of notification.

#### **D. Post-Registration Monitoring**

If a registration is approved, the Registrar of Associations issues a license that establishes the legal capacity of the association. The Law requires that an association inform the Registrar if it modifies its statutes, moves to a new location, or elects a new board. The change must be endorsed by the Registrar to take effect. If an association changes its name or one of its objectives, the Registrar must issue a new license including this change, while keeping the same registration number.

In the event the association neglects to inform the Registrar of Associations of such changes, a first notification is sent to the association, followed by a second notification. If these queries are ignored, the Registrar is entitled to annul the registration. Such a decision may be appealed to the Supreme Court within 30 days.

Each year, the Registrar issues a “Governance Declaration,” a certificate attesting that the administrative and financial operations of the association are in order. To obtain this declaration, an association must provide its balance sheet signed by an auditor appointed by the general assembly, and a detailed statement of income and expenditures, including sources of funding. Without this certificate, a Jerusalemite association cannot conduct any transactions with any official Israeli institution.

## **E. Repeal of Registration**

The Law grants the Registrar of Associations the right to repeal a registration for several reasons, including:

- Conduct of activities in violation of the Law
- Work toward objectives beyond those approved for the association
- Any of the reasons specified in Article 3 of the Law
- Mismanagement
- Fraud or embezzlement
- Default on payment of fees due
- Other reasons at the discretion of the Registrar

Repeal procedures are as follows:

- The Registrar notifies the association.
- A monitor is appointed.
- The representatives of the association are called in by the monitor for investigation.
- The monitor presents his report and recommendations.
- A final decision is made.

If a registration is repealed, the association may appeal the decision before the Supreme Court no later than 30 days after being notified of the Registrar's decision. In this case, the association may not be registered anew under the same name and with the same objectives, unless two years have elapsed since the repeal.

## **F. Tax Settlement**

In accordance with Article 9 of the Income Tax Law, every association must have an account with the tax authorities as a non-profit association.

## SECTION VI

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### Legal and Administrative Requirements Related to the Statutes of Charitable Associations and CSOs

Per Article 4/1 of the Law of Charitable Associations and CSOs, applicants for registration must submit three copies of the organization's statutes. In this section, we outline the legal and administrative requirements that must be met with regard to the statutes and organizational structure of associations and CSOs.

#### A. Statutes

The statutes of an association or CSO must at a minimum include the following for the application to be accepted:

- Full name of the association or CSO, and its main address
- Clearly stated goals and objectives
- Financial resources and how they will be spent for non-profit purposes in a manner that does not conflict with the organization's objectives. This in turn requires that the statutes include the following details:
  - Membership fees, contributions, grants, collections, and project revenues
  - Methods of financial supervision
  - Appointment of an accredited auditor
  - Depositing of funds with one or more banks, with cash not exceeding expenditures for one month
  - Money disbursed through checks and receipts
  - Endorsement of the signatures of authorized signatories, including at least the chairman of the board and the treasurer
- Membership types, terms, and causes for termination. Founding members must elaborate on the conditions required for membership, including any age, gender, educational, or professional requirements. The Law has left these specifications up to association statutes and by-laws. Until by-laws are adopted and implemented, the Law entitles any natural or legal entity that meets the conditions approved by the general assembly in its statutes to become a member of the association or CSO. However, the Model Statutes disseminated by the Interior Ministry to all applicants for registration or adjustment set specific terms that have no legal grounds. From a legal standpoint, these terms can be viewed as the Ministry's own interpretation of the Law, and therefore may be either followed or ignored. In practice, ignoring the Model Statutes has caused problems for many parties, particularly CSOs that have opted to develop their own statutes instead of adopting the Model Statutes. With regard to termination, membership in an association can be withdrawn in the event of death, violation of the association's objectives, or commission of an offense that prejudices the integrity of the person concerned.

- Rules for the dissolution of an association or CSO. An association can be dissolved in the following cases:
  - If a decision is adopted by a two-thirds majority of the general assembly, in accordance with Article 23/3 of the Law, unless the organization's statutes stipulate that a special majority of more than two-thirds is required
  - In the event the association or CSO does not begin activities one year after the issuance of an official registration certificate, unless this is caused by circumstances beyond its control
  - In the event of substantive violations of the statutes and objectives approved by the organization, and if the organization has failed to rectify these violations within three months of receiving a warning from the Interior Minister or competent department

## **B. Administrative and Organizational Structure**

Articles 16-25 of the Law stipulate that there should be two basic levels in the administrative and organizational structure of a charitable association or CSO: a board of directors and a general assembly. The organizational structure is of the utmost importance as it sets the lines of command and framework guiding the activities of associations and CSOs.

*Board of directors.* The legal responsibilities of the board of directors are as follows:

- Every association or organization must have a board of directors that is democratically elected in a meeting of the general assembly once a year or every two years, or in accordance with its statutes.
- It is prohibited to have two or more members on the board of directors with relations of kinship of the first or second degree.
- The board of directors is legally responsible for all the activities of the association or organization — not the executive director or general director, as neither has the right to act without the approval of the board of directors.
- The board of directors represents the association or CSO before third parties through its chairman or whoever acts on his behalf.

It is important to note that many organizations do not adhere to the spirit and text of the Law, often granting the executive director the powers invested in the board of directors, including representation before third parties and decisions related to hiring of staff, salaries, and allowances. The role of the board of directors is thus overshadowed in the following ways:

- The director assumes the roles and responsibilities of the chairman of the board of directors.
- A mini-committee is set up, consisting of the director and a few staff members, effectively replacing the board of directors.
- The board of directors falls short of fulfilling its role, giving up the powers entrusted to it by Law. This happens because some boards view themselves as a mere formality set up to add moral weight before funders.

This shortcoming prevailed long before the new Law was enacted, but should not be allowed to continue as it undermines the credibility of the associations and CSOs, as well as the democratic and communal values they seek to promote.

The Law regulates the relationship between the different levels of the organizational structure, and defines the powers and responsibilities of each. Per Article 17, the board of directors is fully responsible for all the activities and operations of the charitable association or CSO. The powers of the board of directors can be summed up as follows:

- Draft required by-laws, regulations, and policies
- Hire or terminate staff, including the executive director
- Establish the internal administrative structure, as well as supporting professional and technical committees
- Establish financial policies and approve financial disbursements
- Call ordinary and extraordinary meetings of the general assembly, and implement its decisions and policies
- Represent the organization before other parties at the local and international levels

The following requirements must be met before the board of directors can execute its powers, or supervise their execution:

- The board of directors must consist of no less than 7 and no more than 13 members.
- No member of the board of directors can at the same time work for the organization in return for remuneration, as stipulated in Article 20 of the Law. Several associations are in violation of this provision.
- It is prohibited to have two or more members on the board of directors with relations of kinship of the first or second degree.
- It is prohibited for the same person to be chairman of the board for more than one organization at a time. There is no stipulation in the Law to that effect, but Interior Ministry officials have been adamant about this condition, which has been problematic for some organizations.

*General assembly.* The general assembly is the general body composed of the entire membership of a charitable association or CSO. Per Article 2 of the Law, it is the highest authority in the association or CSO. The Law does not specify the conditions of membership, entrusting them to the general assembly, which must set the conditions at its founding meeting or in periodic meetings in a manner consistent with the organization's goals and objectives.

In practice, charitable associations and CSOs have two kinds of general assemblies: (1) extensive general assemblies including a large and growing membership, as is the case for clubs and traditional charitable associations (e.g., Association of Ramleh, Association for the Disabled); and (2) small general assemblies, as is the case for specialized associations targeting a specific group of people (e.g., credit associations, artists' associations, human rights associations).

Although the Law is clear on the matter, Interior Ministry officials insist that membership in any general assembly be open, disregarding the fact that many organizations are highly specialized. This is one of the many unresolved issues between associations and the Interior Ministry, which tends to put these organizations in the same "basket," applying the same criteria to all despite varying characteristics and the different roles and objectives they seek to fulfill.

Since the Law empowers the general assembly and board of directors to determine the terms of membership, CSOs believe this should be done according to scientific and professional criteria as many of these organizations operate in specialized areas such as healthcare, art, care for prisoners, credit, or research, as in the case of Birzeit University. Many CSOs question the rationale behind opening membership to any citizen, unless he or she meets certain professional conditions. However, in the case of sports clubs and charitable or voluntary associations, it may be beneficial to open membership in the general assembly to whoever may wish to join.

In formulating the powers of the general assembly in the statutes of an association or CSO, we recommend that the following basic guidelines be adopted:

- The general assembly is the highest authority in an association or CSO. The board of directors reports to and is accountable to the general assembly between its ordinary or extraordinary meetings.
- The general assembly is responsible for electing the board of directors, each according to his or her post.
- The general assembly discusses and approves the annual report of the board of directors.
- The general assembly approves the organization's strategic vision and annual plan, as well as the balance sheet and annual budget presented by the board of directors and audited by a certified auditor.
- The general assembly convenes at least once a year, at the invitation of the board of directors. One-third of the membership may call for an extraordinary meeting in accordance with Article 24.
- A meeting of the general assembly is considered to have legal quorum when attended by the absolute majority (i.e., 50 percent plus 1). If an absolute majority quorum is not available, the meeting is postponed to another session to be convened within 15 days of the date of the first meeting. Per Article 25, such a meeting requires attendance by at least one-third of the general assembly membership to attain a legal quorum.
- An absolute majority of the members of the general assembly is required to amend the statutes. A decision by two-thirds of the members is required for dissolution of the board of directors, or dismissal of some of its members, or a union or merger entered into by the organization.



## SECTION VII

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### Practical Problems in the Registration Process

Once all legal requirements pertaining to the registration process have been met, the two-month period required for obtaining a registration certificate is set in motion, provided no denial of registration has been issued. This is in accordance with Article 4/3, which stipulates that “If two months elapse after the submission of the application to the Department without it taking a decision, the association or organization is considered registered by virtue of the Law.”

However, in practice, legal provisions are not observed, and extra-legal procedures are applied instead. Below, we summarize the main problems in the registration process based on past experience and various interviews with government officials, representatives of charitable associations and CSOs, lawyers, and legal advisers.

#### A. Overlap of Administrative Authority Between Various Ministries

There is significant overlap between the administrative authority of the Interior Ministry and the competent ministries.<sup>31</sup> The problem is compounded when the competent ministry does not reply to a Department of Public Affairs request soliciting its opinion. The Interior Ministry often considers this a justification for not granting a registration certificate within the period specified by law. For example, the Jerusalem Center for Women’s Associations submitted its application for registration in December 2000 and has not received a certificate under the pretext that the Ministry of Social Affairs — the competent ministry in this case — did not respond to the Interior Ministry.

Since the Interior Ministry is legally responsible for the registration process, this is not sufficient justification for turning down an application for registration. However, Izz Abu Sneineh, director of the Interior Ministry’s Legal Department, said: “If the Interior Ministry does not receive a reply from the competent ministry, it is entitled to take the sound appropriate measure, and the Department of Associations shall take the appropriate decision.”<sup>32</sup>

A negative reply from the competent ministry is another justification provided by the Interior Ministry for turning down an application for registration. This position violates Article 4/4 of the Law, which stipulates that “in the event a decision is issued refusing registration, the reasons behind the decision have to be given.”

From past experience and based on cases examined as part of this study, it appears there is extensive overlap between the Interior Ministry, the Ministry of Social Affairs, and the Ministry of Community Work.<sup>33</sup> In an interview with *Al Hayat Al-Jadida* on July 20, 1999,

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<sup>31</sup> “Competent” ministries are those ministries related to the activities of the association, such as the Ministries of Labor, Justice, Health, Social Affairs, Community Work, etc.

<sup>32</sup> Interview with Izz Abu Sneineh, director of the Interior Ministry’s Legal Department, December 2, 2002.

<sup>33</sup> The Ministry of Community Work was established by Presidential Decree No. 2 of 1998. On October 6, 1999, Decree No. 4 was issued specifying the competence of the newly-created Ministry. Article 1 of the Decree stipulates that “The Ministry of Community Work aims to coordinate and regulate activities between all community organizations and foreign organizations and government agencies.” This received a reserved welcome from the CSO community.

former Minister of Community Work Hassan Asfour went beyond the role assigned to his Ministry by presidential decree, stating that “the Ministry of Community Work shall constitute the legal reference for community organizations. It shall adjust their status in accordance with the Law after it is adopted, ratified, and published in the Official Gazette, provided the registration of these organizations remains with the Interior Ministry.” He added: “The Ministry shall work on reformulating the funding policies of these community organizations to render them more responsive to the priorities of our society since it appears that the focus on Palestinian rural communities has been minimal.”

According to Mr. Asfour’s interpretation, the role of the Ministry of Community Work is to serve as “the legal reference” with powers including “reformulating the funding policies” of CSOs, while the Interior Ministry retains the narrow procedural role of registering associations and community organizations. This interpretation is in contravention of the Law, particularly Articles 4/1-2, 37, and 38, which clearly grant the Interior Ministry certain powers both during and after the registration process, including a monitoring role, as well as the power to dissolve associations and repeal their registration.

Article 6 stipulates that “The competent ministry bears the responsibility for following up on the activities of associations and civil organizations in accordance with the provisions of this Law. The Ministry may examine the activities of any association or civil organization upon a written substantiated decision from the competent minister for the specific case in order to ascertain that its funds have been disbursed for the objective it was established to achieve in accordance with the provisions of this Law.”

Although the provisions of the Law are clear, the Ministry of Community Work signed a Memorandum of Understanding with the Ministry of Finance regarding tax and customs exemptions. The Memorandum states that “A joint committee of the two Ministries shall regulate all procedures and instructions related to tax and customs exemptions for charitable associations, as well as community and foreign organizations.”<sup>34</sup>

Despite unambiguous legal provisions, many competent ministries interfere in the registration process. Available data indicate that 96.4 percent of all CSOs operating in the West Bank and Gaza are registered with a government agency, while 3.6 percent are not registered with any agency. The data also indicate that 37 percent of these organizations were established after the inception of the PNA. According to the study, 41.8 percent of the organizations are registered with the Interior Ministry, 10.1 percent with the Ministry of Community Work, and 80.6 percent are registered with the competent ministry.<sup>35</sup>

The overlap of powers is not only between the Interior Ministry and the Ministry of Community Work, but also includes the Ministry of Social Affairs. Former Under-Secretary of the Ministry of Social Affairs Diab Alloush said: “The task of the agency that performs registration ends at that point, and then the competent ministry takes over,” adding: “I see nothing wrong in having the community organizations register with the Interior Ministry, but then be placed under the supervision of the competent ministry.”<sup>36</sup>

<sup>34</sup> “Memorandum of Understanding Between the Ministry of Community Work and the Ministry of Finance,” March 4, 2002.

<sup>35</sup> Yasser Shalabi, *Ti'dad al-monathamat gair al-hukomeyya fi al-diffa al-garbeyya wa qita' gaza* (“Survey of NGOs in the West Bank and the Gaza Strip”), Palestine Economic Policy Research Institute (MAS), May 2001, p.21.

<sup>36</sup> *Assiyasa al-falastinyah* No. 24, Autumn 1999, pp. 124-125.

Past experience shows that the Interior Ministry usually supports the position of the competent ministry although it is in violation of the Law. According to a Legal Department official, “the Interior Ministry adheres to the decision of the competent ministry, and this is in accordance with a decision the under-secretary of the Interior Ministry has taken.” When asked to explain this position, the official added that “failing to do so may result in the competent ministries’ boycotting of the Interior Ministry and refusal to cooperate with it.” Mazen Shaqqourah of the Palestinian Independent Commission for Citizens’ Rights said: “The Law entrusted the function of registration and oversight exclusively to the Interior Ministry. However, the competent ministry also has a supervisory role, not in registration and oversight, but on the practical side. The approval of the competent ministry is required for licensing and for approval of funding.”<sup>37</sup>

In some cases, the Interior Ministry has difficulty determining which competent ministry should review an application for registration. This is often due to the nature of the organization’s work, as is the case with human rights organizations. One case in point is the Palestinian Center for the Independence of the Judiciary and the Legal Profession. The Interior Ministry decided to refer the Center’s application to the Ministry of Justice, but the latter rejected it. The Center documented the rejection in a statement under oath before the competent court.

## **B. Requests for Additional Unwarranted Documentation**

By law, applicants that fulfill all the legal requirements for registration should obtain a registration certificate within 60 days. In practice, however, Interior Ministry officials often request additional documentation or superficial corrections to the application before or after the 60-day period has expired. Article 4/2 of the Law states: “In the event additional documentation is submitted or certain deficiencies corrected in order to fulfill all registration requirements, the two-month period commences as of the date this additional information is submitted.”

When documents are submitted after the 60-day deadline, Ministry officials set the clock back and impose a new deadline. In many cases, applicants are asked to make further modifications even after submitting new documentation in response to a request from the Ministry. Commenting on this issue, Amjad Al-Shawa, coordinator of the PNGO Network in Gaza, said: “Some 15 association members of the PNGO Network in the Gaza Strip have submitted all the documentation for adjustment of their status more than a year and a half ago, but to no avail. The reason the Interior Ministry gives is that it is demanding amendments of statutes or changes in the names of these associations.”<sup>38</sup>

This not only illustrates the fact that there is no clear authority responsible for following up on such applications, but also that there are no specific criteria for requiring additional documentation, which leaves the door wide open for all subjective interpretations and personal viewpoints on the matter.

<sup>37</sup> Interview with Mazen Shaqqourah, director of the Gaza office of the Palestinian Independent Commission for Citizens’ Rights, November 16, 2002.

<sup>38</sup> Interview with Amjad Al-Shawa, coordinator of the PNGO Network in Gaza, November 26, 2002.

### C. Lack of Awareness of Legal Procedures

Typically, more than two months elapse between the date a registration application is received by the competent department and the date the department provides its observations as to the statutes or requests additional information. This stands in clear contravention of the Law. Of the dozens of cases examined for this study, the majority of applications for registration or adjustment were submitted more than a year ago, but a final response has yet to be received.

Demanding compliance with Article 4/3 of the Law is a futile exercise. The Ministry is aware that it can prolong the process and apply various forms of pressure on any organization. By simply refraining from issuing a certificate of registration or adjustment, the Ministry can obstruct CSO operations, especially for those organizations that need the certificate for transactions with banks or the customs and tax departments.

In addition, some donors require associations to be licensed before they can receive grants, such as the French Karl Marx Foundation and the German Rosa Luxemburg Institute. Both institutions have asked the Palestinian Center for Peace and Democracy to obtain a registration certificate from the Interior Ministry as a precondition for receiving financial support.<sup>39</sup>

Ministry officials give a number of justifications for denying a certificate of registration, such as having reservations on certain parts of the applicant's statutes. On closer scrutiny, such reservations often turn out to be trivial, with no legal or procedural basis. Many officials appear ignorant of the Law, often upholding superficial procedures, particularly when the Interior Ministry's Model Statutes are not adopted. "The problem is that the official gives the Law his personal interpretation, and considers his own interpretation to be the only standard of truth," said George Giacaman of the Palestinian Institute for the Study of Democracy.<sup>40</sup>

This is precisely what happened to the Red Crescent Society in Gaza. "We submitted an application for adjustment of the Society on October 28, 2000," said Executive Director Abdul-Aziz Abu Al-Karaya. "Five days later, we received a letter from the Interior Ministry demanding that we amend our statutes. We complied with the Ministry's demand. On May 10, 2001, we were surprised by another letter from the Interior Ministry, six months after the date of the last amendment, demanding that we introduce a new amendment that would in fact lead to the reformulation of the statutes."<sup>41</sup>

When asked whether organizations that have applied for registration over a year ago have any recourse, Mr. Abu Sneineh said: "All associations and organizations should approach the under-secretary of the Interior Ministry who can solve the whole problem in 24 hours."<sup>42</sup>

### D. Lack of Professionalism

There seems to be a negative view in official circles of organizations with greater weight, influence, and capabilities, particularly those that are independent from official PNA

<sup>39</sup> Interview with Nassif Mu'alleem, director general of the Palestinian Center for Peace and Democracy, November 29, 2002.

<sup>40</sup> Interview with George Giacaman, director general of *Muwatin*-The Palestinian Institute for the Study of Democracy, November 6, 2002.

<sup>41</sup> Interview with Abdul-Aziz Abu Al-Karaya, executive director of the Palestinian Red Crescent Society in the Gaza Strip, November 15, 2002.

<sup>42</sup> Interview with Izz Abu Sneineh, op cit.

institutions. Many are licensed by the Israeli Interior Ministry (Jerusalem associations), or are registered as “non-profit” companies or corporations with the Registrar of Companies, or have gained *de facto* legitimacy, particularly those associations that had strong ties with the political movement and proved their presence without soliciting legitimacy from Israeli authorities. After 1995, many of these associations obtained registration certificates from various PNA ministries before the new Law came into effect. For example, *Muwatin*-The Palestinian Institute for the Study of Democracy obtained a certificate of registration from the Palestinian Ministry of Information, the Center for Teacher Creativity (*Ibdaa Al-Moallim*) from the Ministry of Education, and the Bisan Center for Research and Development from the Ministry of Culture and Information.

Available information indicates that in many instances refusal to grant a license is not based on legal provisions or administrative procedures stipulated by law, but rather on the personal evaluation of officials in the Interior Ministry, the security services, or the competent ministry. For example, Addameer Society for the Defense of Prisoners and Human Rights was granted a license by the Interior Ministry before the new Law came into effect. When it tried to adjust its status, a whole year elapsed before its application was turned down on grounds that “the competent ministry gave a negative response.” When the director of the society, Khalida Al-Ratrut, wrote to Minister Hisham Abdul-Raziq, he denied having any knowledge of the matter, and said his Ministry supports granting a license to the Society. It turned out that one of the officials at the Ministry of Prisoner Affairs had sent a letter of refusal to the Interior Ministry because, in his opinion, “Addameer Society should merge with the Prisoners’ Club.”<sup>43</sup>

The Interior Ministry denies that the political opinions of individual officials interfere with the registration process. According to Mr. Abu-Sneineh, “There are no reservations held against any parties, provided their application meets all the legal requirements; nor do we give any consideration to the political orientation of the founders of these associations or organizations.” He justified the delays as caused by objective factors or to a delayed response from the competent ministry or the security services.<sup>44</sup>

However, this justification is inaccurate. The real issue pertains to the professionalism of relevant officials, as well as the spirit of responsibility in the relationship between the state and the citizen without discrimination as to creed, race, or political affiliation. The prevailing attitude in official circles is that the authority of the ruling party supersedes citizens’ rights. This attitude is reflected in how officials deal with the issue of registration, often breaching the Law in the interest of subjective considerations. This is particularly evident in the support extended to those associations that are affiliated with the PNA or the ruling party. Registration procedures are also affected by a network of local relations involving political and tribal dimensions, regardless of legal considerations.

## **E. Delayed Adjustment of Status**

Article 43 of the Law specifies which organizations must adjust their status, provided they are already registered with one of the PNA ministries. This ignores the hundreds of organizations established prior to the inception of the PNA, which have attained national

<sup>43</sup> See the letter sent by Attorney Ribhi Qatamish to Interior Ministry Under-Secretary Ahmad Said Al-Tamimi on the case of Addameer Society for the Defense of Prisoners and Human Rights, July 11, 2001.

<sup>44</sup> Interview with Izz Abu-Sneineh, op cit.

legitimacy through decades of activities. Jerusalem organizations are a case in point as they are not licensed by any PNA ministries.

When these organizations try to adjust their status, their applications are turned down and they are asked to register anew, which requires them to dissolve themselves and start from scratch, creating significant administrative and financial burdens. Organizations that have submitted an application for registration but have neither received a certificate nor been turned down find themselves in legal limbo and are forced to operate outside the law. During a Tamkeen workshop at the Chamber of Commerce in Ramallah on January 20, 2003, the director of the Interior Ministry's Department of Public Affairs, Amjad Abu Shamleh, stated: "To date, we have granted certificates of registration to 500 associations in the West Bank. Of these, 293 applied for registration, and the rest applied for adjustment." However, Mr. Abu Shamleh did not mention those organizations that are still awaiting a response from the Ministry.

In an interview conducted in late 2002, Mazen Shaqqourah of the Palestinian Independent Commission for Citizens' Rights said: "There are 12 associations that have completed all the required procedures and presented all the required documentation for adjustment a year ago or more, and have not yet received certificates of adjustment from the Interior Ministry."<sup>45</sup> In addition, an examination of correspondence between the PNGO Network and the Interior Ministry reveals that about 31 organizations had not received any response a year after their applications for registration or adjustment were submitted.

## **F. Political Background of the Founding Members**

The political background of the founding members is one of the most prominent problems confronting applicants for registration or adjustment in Gaza. Amjad Al-Shawa, coordinator of the PNGO Network in Gaza, said: "Our problem lies in the complex administrative procedures for registration, particularly when it comes to the security profiles of the founding members, and this is what we reject and have officially conveyed to the Interior Ministry, including the under-secretary and the director general of the Department of Public Affairs."<sup>46</sup> In the same vein, Maher Abu Amsa of the Taghrir Association for Culture and Art said: "The requirement to complete security profile forms for the founding members of the board of directors is totally unacceptable. We are community work organizations. Why do they ask about our political affiliation?"<sup>47</sup> These requirements are not applicable in the West Bank.

According to the Interior Ministry, this is a routine matter carried out upon the request of the security services. However, this procedure has no legal grounds, and some parties even consider it to be in breach of the Basic Law. The director of the Interior Ministry's Department of Associations in Gaza, Yunis Abu Nada, said: "As for security profile forms, this is an internal procedure of the Interior Ministry. However, we have not turned down any application for registration by any association on security grounds."<sup>48</sup>

<sup>45</sup> Interview with Mazen Shaqqourah, director of the Gaza office of the Palestinian Independent Commission for Citizens' Rights, November 16, 2002.

<sup>46</sup> Interview with Amjad Al-Shawa, coordinator of the PNGO Network in the Gaza Strip, November 20, 2002.

<sup>47</sup> Interview with Maher Abu Amsa, chairman of the board of directors of Taghrir Society for Arts and Folklore in Beit Hanoun, Gaza, November 18, 2002.

<sup>48</sup> Interview with Yunis Abu Nada, director of the Interior Ministry's Department of Associations, Gaza. The interview was conducted by Attorney Karem Nashwan in Gaza on November 18, 2000.

The role of the security services goes even further. After the registration application is accepted for processing, the Department of Public Affairs corresponds with the security services (i.e., Preventive Security and General Intelligence Services), requesting their approval of individual applicants within one month. “A positive response from any one of the two services is sufficient for the completion of registration procedures,” said the director of the Interior Ministry’s Department of Public Affairs, Amjad Abu Shamleh. “In the event there are security-related reservations as to any one of the founding members, then the application is turned down.”

No one can ascertain whether the reservations are solely security-related. There are indications, however, that other factors may be at play. According to the Palestinian Independent Commission for Citizens’ Rights, “The Interior Ministry or the competent ministry has delayed the registration of some associations, while other applications were turned down upon the recommendation of the security services for political considerations based on the affiliations of the founding members with certain political movements or factions, particularly in the case of the Islamic factions.”<sup>49</sup>

## G. Financial Oversight

Many charitable associations and CSOs have been denied a certificate of registration on suspicions of financial misconduct or mismanagement, even in the absence of material evidence. The Law sets forth specific mechanisms to regulate the finances of associations. Article 11/6 requires detailed record-keeping of revenues and expenditures in accordance with accepted financial standards. In addition, organizations must publish financial statements in an annual report and deposit funds in bank accounts known to the Interior Ministry, keeping no more than the equivalent of one month’s expenditures in cash.

Foreign funding has been a particularly contentious issue. Some officials feel that foreign aid to CSOs takes away from the pool of funds available to the PNA and is disbursed in “illegal and suspicious ways.” This was the position expressed by the head of the General Monitoring Commission: “We are convinced that the revenues of these associations are deducted from the grants and allocations for the Palestinian people, and most of these revenues are used in an undisciplined way by those who run these associations.”<sup>50</sup>

In fact, the General Monitoring Commission scrutinizes the records of all charitable associations and CSOs, often spending a week or more on such audits. The Commission is often met with full cooperation from the organizations under audit and completes its review without expressing any reservations or reporting on misuse of funds.

Association and CSO representatives feel their organizations are all held suspect, without any distinction between the majority that abide by the rules and the few guilty of financial corruption. This attitude creates an environment hostile to community work based on accusations that CSOs have foreign links. Furthermore, it appears that the issue of foreign funding is often used as a pretext to deny registration. Officials have no objections to the fact that many governmental or quasi-governmental bodies affiliated with the PNA receive foreign assistance. In the event of actual misappropriation of funds or corruption on the part

<sup>49</sup> *Tashkeel al-jam’eyat fi manateq al-solta al-wataneyya bayna al-qanun wal-mumarasa* (“The Establishment of Associations in the Territories of the Palestinian National Authority: Law Versus Practice”), Palestinian Independent Commission for Citizens’ Rights, *Silsilat al-taqarir al-khasa* No. 15, May 2002, pp. 7.

<sup>50</sup> Letter addressed to President Yasser Arafat from the head of the General Monitoring Commission, Jarrar Al-Qudwa, April 21, 1999.

of association representatives, legal remedies are available to investigate such cases and hold the organizations accountable. However, “there is no rule of law, and there is no role for the judiciary,” said Dr. Giacaman. “Why is a person who tampers with public funds not held to account, and why are the results of the financial oversight visits not disclosed? Why are the provisions of the Law not implemented when it comes to legal oversight?”<sup>51</sup>

This view is not only prevalent among CSOs, but is also echoed in some official circles. “At present, oversight is lacking,” said Mr. Abu Sneineh. “This is due to the fact that the Law is so new, and also due to objective conditions, including the lack of a plan and of sufficient numbers of qualified staff.”<sup>52</sup>

## **H. The Interior Ministry’s Model Statutes**

By law, charitable associations and CSOs are free to either adopt the Interior Ministry’s Model Statutes, or develop their own statutes in accordance with legal provisions. Most Palestinian organizations established before the 2000 Law of Charitable Associations and CSOs took effect tend to develop their own statutes in line with their areas of activity and organizational structures. This is in accordance with the Law, which entrusted this decision to the board of directors or the general assembly.

Nevertheless, Interior Ministry officials tend to use the Model Statutes as a pressure tactic. For example, after an 18-month delay, a Ministry official told the MA’AN Development Center it could obtain a license within one month if it would adopt the Model Statutes.<sup>53</sup> This was also the case for the Taghrid Society for Culture and Art in Beit Hanoun, Gaza, according to Chairman of the Board Maher Abu Amsha: “More than once, they [Interior Ministry officials] demanded that the statutes be amended. The amendments all aimed to hold us literally to the Model Statutes prepared by the Interior Ministry, even though we complied with all the required amendments.”<sup>54</sup>

Our research indicates that a variety of direct and covert measures are used to pressure organizations into adopting the Model Statutes, which include terms that breach the provisions of the Law.

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<sup>51</sup> Interview with George Giacaman, op cit.

<sup>52</sup> Interview with Izz Abu Sneineh, op cit.

<sup>53</sup> Interview with Sami Khader, director general of the MA’AN Development Center, Ramallah, November 6, 2002.

<sup>54</sup> Interview with Maher Abu Amsha, op cit.



## SECTION VIII

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### Observations on the Draft Regulations and Model Statutes

#### A. Draft Regulations

Article 44 of the Law of Charitable Associations and CSOs grants the Interior Ministry the authority to issue regulations to facilitate implementation of the Law, without prejudice to the substance of its provisions and without adding new provisions. The Ministry has developed draft regulations, but they have yet to be adopted.

To date, the draft regulations have not been discussed with the competent ministries or Palestinian CSOs, whose role is purely consultative. The regulations will also have to be submitted to the Council of Ministers for approval, pending a review by *Diwan Al-Fatwa wal-Tashri'*, the Legal and Legislative Opinion Committee of the Ministry of Justice. Article 3 of Law No. 4 (1995) on the procedures for drafting legislation stipulates that the function of *Diwan Al-Fatwa* is restricted to “the examination of proposed legislation and introduction of any appropriate amendments in a manner that would not change its substance and purpose.”<sup>55</sup> This means that final authority rests with the Interior Ministry, although the Ministry of Community Work and the PNGO Network have also contributed to drafting the regulations.

Since amendments will most likely be introduced, the observations presented below pertain to the draft regulations in their present form:

- Articles 1 and 3 of the draft regulations define the areas in which charitable associations and CSOs can operate. This contravenes the Law, specifically Article 1, which grants organizations “the right to practice social, cultural, professional, and scientific activities” without limitations.
- Article 19 of the draft regulations requires organizations to obtain prior approval from the competent ministry before opening new branches. This contravenes Article 15 of the Law, which stipulates that associations “have the right to establish branches in Palestine.” Notifying the Interior Ministry of plans to open new branches should be sufficient.
- Articles 15 and 16 of the draft regulations prohibit charitable associations and CSOs from initiating activities before registration is approved and published in the Official Gazette. Publication of the approval is a new consideration introduced by the draft regulations with no basis in the Law.
- Article 10 requires all new associations and CSOs, or those that have adjusted their status, to adopt the Model Statutes developed by the Interior Ministry, which is in contravention of the Law.
- Article 29 sets the term of the board of directors at no more than three years. However, the Law regards this issue as an internal affair, relegating it to the statutes of the association or CSO.

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<sup>55</sup> Law No. 4 on the Procedures for Drafting Legislation, issued in 1995.

- Article 29/C of the draft regulations does not allow “the same person to be a member of the board of directors in *any* charitable association or civil society organization, and at the same time work for the association or organization in return for remuneration.” Article 20 of the Law only prohibits membership in the board of directors of an association or CSO and employment by *the same* association or CSO in return for remuneration.
- Article 29/C also prohibits a person from serving on the board of directors of more than one association or CSO at a time, except with special permission from the Minister, which is in contravention of the Law.

## B. Model Statutes

The Model Statutes were developed by the Interior Ministry for newly established organizations to be completed and attached to applications for registration. Below, we outline provisions that contravene the Law and should be amended:

- Article 5 of the Model Statutes stipulates that an association has the right to open one or more branches in Palestine with the approval of the Interior Ministry and the competent ministry. The Law grants the right to open branches without any conditions.
- Article 10 sets conditions for membership, requiring all members to be at least 18 years of age. This requirement deprives large numbers of citizens from the right to join associations and clubs.
- Article 14 stipulates that “An association is administered by a board of directors, made up of seven members who are elected by the general assembly for a two-year term.” Limiting the term for members of the board of directors contravenes the Law, which relegated the matter to the board of directors and general assembly.
- Article 42/B on the dissolution of an association stipulates that “The decision to dissolve becomes valid when two-thirds of the members of the general assembly attend the meeting, and [the decision] is approved by two-thirds of those members in attendance.” This contravenes Article 23/3 of the Law, which requires a decision by two-thirds of the general assembly for the dissolution of an association, not two-thirds of those present.
- Articles 4, 5, and 43/3 set provisions for the dissolution of an association by the Interior Ministry, raising serious concerns among the CSO community. The Law makes no reference to such provisions, which have led many associations to refrain from adopting the Model Statutes. These provisions grant the Interior Ministry the right to dissolve a charitable association or CSO if the organization: (1) uses its funds for purposes other than those approved by the Ministry; (2) submits false information to the Ministry or any other official agency; and/or (3) violates any legal provisions, or public order or morals.
- Article 47 stipulates that “A charitable association is prohibited from practicing political activities.” The Law makes no such reference. This provision provides

yet another pretext for closing down an association or refusing to grant a registration certificate on grounds that the association's objectives could be interpreted as a form of political activity, as might be the case in matters related to legislation, lobbying, networking, influencing public policies, defending the rights of prisoners or workers, addressing violations of women's rights or the rights of the child, opposing normalization with Israel, and the like.



## SECTION IX

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### Recommendations

In light of the findings of this study, we offer some recommendations aimed at promoting full compliance with legal provisions, facilitating and streamlining the registration process, and improving the nature of the relationship between community organizations and the executive authority. With this in mind, we feel it is important to:

- Enforce compliance with the provisions of the Law and establish mechanisms for its implementation, such as setting a deadline for responses from the security services and competent ministries
- Ensure adherence to the legal limits set for granting a registration certificate and to sound legal procedures in cases of dissolution or shutdown of an association
- Prepare a legal memorandum to include observations and proposed amendments to the Law, and submit them to the Palestinian Legislative Council for consideration
- Make every effort to adopt the regulations without delay in cooperation with competent ministries and CSOs as these are instrumental to implementing the Law, provided they do not conflict with any of its provisions
- Define the powers and responsibilities of the competent ministry in the by-laws to avoid any confusion or overlap in practice
- Adjust the status of charitable associations and CSOs where applicable and in accordance with the Law to avoid their dissolution or shutdown (a quarter of all associations are currently out of status, according to Interior Ministry estimates)
- Hold periodic democratic elections in all charitable associations in line with the principles of participation, democracy, transparency, and respect for the provisions of the Law
- Add articles to the Law that would bar senior government officials from having leadership positions in the boards of directors of associations and CSOs; remove some of the contradictions in the provisions of the Law, particularly in Articles 2 and 27; and elaborate on the concept of the “public interest”
- Desist from requiring all applicants to adopt the Model Statutes, giving them the right to choose their own statutes in accordance with the Law
- Address the contradiction between the provisions of the Law and the provisions of the Model Statutes

- Establish a specialized department in the Interior Ministry with a sufficient number of qualified staff to ensure efficient processing and supervision of registration
- Develop regulations that specify the powers and responsibilities of the departments and public officials involved in the registration process in order to streamline internal procedures
- Convene a workshop for lawyers, auditors, CSO directors, and Interior Ministry representatives to discuss pending issues related to the internal financial procedures of associations and CSOs
- Convene a workshop between the Interior Ministry and representatives of associations and CSOs to develop guidelines and agree on the mechanisms required to ensure full compliance with the provisions of the Law, both on the part of the associations and the Ministry
- Allow Jerusalem organizations that are already registered with Israeli authorities to register with the Palestinian Interior Ministry
- In cases of branch openings, mergers, or unions, require only notification and submission of documentation to the Interior Ministry
- Reinvigorate the boards of directors so they may assume their full responsibilities in accordance with the Law, rather than relegating them to CSO executives